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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,994	06/08/2001	Bruno Biatry	208594US0	8350

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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 07/29/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/875,994

Applicant(s)

BIATRY, BRUNO

Examiner

Gina C. Yu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 and 26-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of Amendment filed April 30, 2003. Claim rejection under 35 U.S.C. § 112 is withdrawn in view of the claim amendment by applicants. Claim rejections under 35 U.S.C. §§ 102 and 103 are maintained for the reasons of record as indicated in the previous Office action dated December 31, 2002. Claims 1-24 and 26-31 are pending.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1-24 and 26-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Ribier et al. (U.S. Pat. No. 6,071, 524) ("Ribier I").

Rejection is maintained for the reasons of record.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Derwent Acc. No. 1986-321473 (English abstract of JP 61236737 A) ("Kuraray abstract" hereunder).

Rejection is maintained for the reasons of record.

2. Claims 2, 3, 5, 6, 15, 17-19, 21, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuraray abstract as applied to claims 1, 23, and 24 above, and further in view of Ribier et al. (U.S. Pat. No. 5,834,018) ("Ribier II").

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Rejection is maintained for the reasons of record.

3. Claims 2-4, 26, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuraray abstract as applied to claims 1, 23, and 24 as above, and further in view of Murad (U.S. Pat. No. 6,207,694 B1).

Rejection is maintained for the reasons of record.

4. Claims 2-4, 26, and 29 are rejected under 35 U.S.C. § 103 (a) as unpatentable over Kuraray abstract as applied to claims 1, 23, and 24 above, and further in view of Bergmann (U.S. Pat. No. 6,110,450).

Rejection is maintained for the reasons of record.

Response to Arguments

Applicant's arguments filed on April 30, 2003 have been fully considered but they are not persuasive.

Applicants argue that Ribier I fails to disclose the claimed method of protecting, improving, reducing and/or preventing skin from harmful effects of pollutants "each and every time" the prior art is used. Applicants' argument that not every person using the Ribier I composition can get the benefit of the claimed method is unpersuasive. The prior art was known public "in this country" more than one year before the filing of the present application, and that constitutes the ground for a rejection under 35 U.S.C. § 102 (b). Applicants' conjecture that some prior art users may be exposed to less pollutant actually does not change the fact that the reference is published and known in all areas in the United States. Furthermore, there is no limitation as to what is defined

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as "pollutant". Does it not include UV radiation which is present in all geographical region?

Applicants argue that the Kurary abstract does not teach how the prior art composition comprising phytanetriol protects hair or skin. Examiner notes that the claimed method is directed to the same method of topically applying the same composition for protecting skin. The actual mechanism of the protection as asserted by applicants (i.e., blocking the penetration of pollutants through skin) is not a claimed limitation, and even if it were, would be given no patentable weight since that property would be inherently present in the Kurary composition as well.

Conclusion

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
July 17, 2003



SREENI PADMANABHAN
PRIMARY EXAMINER

7/27/03